

1 SUE ELLEN WOOLDRIDGE
2 Assistant Attorney General
3 Environment & Natural Resources Division

4 PAUL K. CHARLTON
5 United States Attorney
6 District of Arizona
7 SUE A. KLEIN
8 Assistant United States Attorney
9 Arizona State Bar No. 11253
10 Two Renaissance Square
11 40 North Central Avenue, Suite 1200
12 Phoenix, AZ 85004-4408
13 Telephone: (602) 514-7740
14 sue.klein@usdoj.gov

15 ROBERT H. FOSTER
16 TODD W. GLEASON
17 Trial Attorneys
18 Environmental Defense Section
19 United States Department of Justice
20 P.O. Box 23986
21 Washington D.C. 20026-3986
22 Telephone: (202) 305-0739
23 Fax: (202) 514-8865
24 robert.foster2@usdoj.gov
25 todd.gleason@usdoj.gov

26 IN THE UNITED STATES DISTRICT COURT
27 FOR THE DISTRICT OF ARIZONA [PHOENIX DIVISION]

28 UNITED STATES OF AMERICA,

Plaintiff,

v.

GEORGE H. JOHNSON, JOHNSON
INTERNATIONAL, INC., GENERAL
HUNT PROPERTIES, INC., and 3-F
CONTRACTING, INC.,

Defendants.

FIRST AMENDED COMPLAINT

2:05-cv-03579 MHM

1 The United States of America, through its undersigned attorneys, by the authority of
2 the Attorney General, and at the request of the Administrator of the United States
3 Environmental Protection Agency, alleges as follows:
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6 **NATURE OF THE ACTION**

7 1. This is a civil action commenced under sections 309(b) and (d) of the Clean
8 Water Act ("CWA"), 33 U.S.C. §§ 1319(b) and (d), to obtain injunctive relief and civil
9 penalties against George H. Johnson, Johnson International, Inc., General Hunt Properties,
10 Inc., and 3-F Contracting, Inc., for the discharge of pollutants into waters of the United States
11 in Pinal County, Arizona, without authorization by the United States Department of the
12 Army, in violation of CWA section 301(a), 33 U.S.C. § 1311(a).
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14 2. George H. Johnson, Johnson International, Inc., and General Hunt Properties,
15 Inc., are collectively referred to herein as the "Johnson Defendants." The Johnson
16 Defendants and Defendant 3-F Contracting, Inc., are collectively referred to herein as the
17 "Defendants."
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19 3. In this action, the United States seeks (1) to enjoin the discharge of pollutants
20 into waters of the United States without a permit in violation of CWA section 301(a), 33
21 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of the
22 Environmental Protection Agency, to restore and/or mitigate the damages caused by their
23 unlawful activities; and (3) to require Defendants to pay civil penalties as provided in CWA
24 section 309(d), 33 U.S.C. § 1319(d).
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JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

Venue is proper in the District of Arizona pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the Defendants conduct business in this District, the subject property is located in this District, and the cause of action alleged herein arose in this District.

5. Filing is appropriate in the Phoenix Division of this Court because the subject property is located in Pinal County and the Johnson Defendants are believed to reside or have their place of business in Scottsdale, Maricopa County, Arizona. Likewise, Defendant 3-F Contracting, Inc., is believed to have its place of business in Gold Canyon, Pinal County, Arizona.

6. Notice of the commencement of this action was provided to the State of Arizona pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), when this action was first commenced in November 2005.

THE PARTIES

7. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519, and 33 U.S.C. § 1366.

8. Defendant George H. Johnson is a private individual residing in Arizona.

1 9. Defendant Johnson International, Inc., is a corporation organized under the
2 laws of Arizona with a business address of 5230 E. Shea Blvd., Scottsdale, Arizona
3 85254-5750.
4

5 10. Defendant General Hunt Properties, Inc., is a corporation organized under the
6 laws of Arizona with a business address of 5230 E. Shea Blvd., Scottsdale, Arizona
7 85254-5750.
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9 11. Defendant 3-F Contracting, Inc., is a corporation organized under the laws of
10 Arizona with a business address of 4831 S. Kings Ranch Rd., Gold Canyon, Arizona
11 85218-4664.
12

13 12. At all times herein, the Johnson Defendants either owned, leased, or otherwise
14 controlled the real property that is the subject of this First Amended Complaint.
15

16 13. At all times relevant to this First Amended Complaint, one or more of the
17 Defendants controlled, financed, and/or undertook the unlawful activities that occurred on
18 the subject property.
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20 **STATUTORY BACKGROUND**

21 14. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants
22 into navigable waters except in compliance with, *inter alia*, a permit issued pursuant to CWA
23 section 404, 33 U.S.C. § 1344 or section 402, 33 U.S.C. § 1342.
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25 15. CWA section 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the
26 Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged
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1 or fill material into navigable waters at specified disposal sites, after notice and opportunity
2 for public comment.

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4 16. CWA section 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant"
5 to include "any addition of any pollutant to navigable waters from any point source."

6 CWA section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, dredged
7 spoil, rock, sand and cellar dirt.

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9 17. CWA section 502(7), 33 U.S.C. § 1362(7), defines "navigable waters" as "the
10 waters of the United States, including the territorial seas."

11 18. 33 C.F.R. §§ 328.3(a)(1), (2) and (5), and 40 C.F.R. § 232.2, define "waters of
12 the United States" to include, *inter alia*: (i) all waters which are currently used, were used
13 in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all interstate
14 waters; and (iii) tributaries to such waters.

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16 19. CWA section 502(14), 33 U.S.C. § 1362(14), defines "point source" to include
17 "any discernible, confined and discrete conveyance . . . from which pollutants are or may be
18 discharged."

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20 20. CWA section 502(5), 33 U.S.C. § 1362(5), defines "person" to include, *inter*
21 *alia* "an individual [or] corporation."

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23 21. CWA section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of
24 a civil action for appropriate relief, including a permanent or temporary injunction, against
25 any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

1 22. CWA section 309(d), 33 U.S.C. § 1319(d), authorizes the commencement of
2 an action for civil penalties against any person who violates CWA section 301(a), 33 U.S.C.
3 § 1311(a).
4

5 **GENERAL ALLEGATIONS**

6 23. From approximately 2003 through 2004, one or more of the Johnson
7 Defendants and/or persons acting under their direction, supervision, and/or control, including
8 Defendant 3-F Contracting, Inc., discharged dredged or fill material into the Santa Cruz
9 River and its tributaries (including the Los Robles Wash), without a permit under CWA
10 section 404 at various sites on what is commonly known as the adjacent King Ranch and La
11 Osa Ranch (the "Ranches") in Pinal County, Arizona.
12

13 24. The Santa Cruz River and its tributaries, including the Los Robles Wash, that
14 flow through, or adjacent to, various parts of the Ranches are "waters of the United States"
15 within the meaning of the CWA and the regulations promulgated thereunder.
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17 25. The dredged or fill material that one or more of the Johnson Defendants and/or
18 persons acting under their direction, supervision, and/or control, including Defendant 3-F
19 Contracting, Inc., caused to be discharged includes, among other things, dirt, spoil, rock and
20 sand, all of which constitute "pollutants" as defined in CWA section 502(6), 33 U.S.C. §
21 1362(6).
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23 26. One or more of the Johnson Defendants and/or persons acting under their
24 direction, supervision, and/or control, including Defendant 3-F Contracting, Inc., used
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1 mechanized land-clearing and earth-moving equipment and/or other "point sources" to
2 accomplish the discharges.

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4 27. One or more of the Johnson Defendants engaged the services of various
5 contractors, to include Defendant 3-F Contracting, Inc., between 2003 and 2004. These
6 contractors, including Defendant 3-F Contracting, Inc., used the aforementioned mechanized
7 land-clearing and earth-moving equipment to accomplish the work that resulted in the
8 discharges.

9
10 28. The equipment used by one or more of the Defendants and persons acting
11 under their supervision, direction, and/or control, falls within the definition of "point source"
12 in CWA section 502(14), 33 U.S.C. § 1362(14).

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14 29. No permit was obtained by anyone from the Secretary of the Army, acting
15 through the Chief of Engineers, for the discharges of dredged or fill material into waters of
16 the United States as alleged herein, and as required by CWA sections 301(a) and 404, 33
17 U.S.C. §§ 1311(a) and 1344.

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19 30. One or more of the Johnson Defendants either owned, leased, or otherwise
20 controlled the land on which each unauthorized discharge of dredged or fill material into
21 waters of the United States occurred.

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23 31. One or more of the Defendants and/or persons acting under their direction,
24 control, and/or supervision, conducted, contracted for, supervised, controlled, and/or was
25 otherwise responsible for the unauthorized activities alleged herein.
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32. Each and every Defendant is a person within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

33. Each and every Defendant violated and continues to violate CWA section 301(a), 33 U.S.C. § 1311(a), by its unauthorized discharge of dredged or fill material into waters of the United States.

34. Each day that such material remains in place constitutes a separate violation of CWA section 301(a), 33 U.S.C. § 1311(a), by each Defendant.

35. Unless enjoined, each Defendant is likely to continue to discharge dredged or fill material into and/or to allow dredged or fill material to remain illegally placed in waters of the United States in violation of CWA section 301, 33 U.S.C. § 1311.

PROCEDURAL HISTORY

36. The United States filed a Complaint (the “Initial Complaint”; Dkt. 1) against the Johnson Defendants, on or around November 7, 2005.

37. The Initial Complaint contained two counts. Count One alleged, *inter alia*, that, “[b]etween 2003 and 2004, one or more of the [Johnson] Defendants and/or persons acting on their behalf conducted large-scale mechanized land-clearing and earth-moving activities [at the King and La Osa] Ranches.”

38. On March 20, 2006, the Johnson Defendants responded to the Initial Complaint by filing: (A) a Motion to Dismiss Claims for Injunctive Relief (Dkt. 4) and (B) a Motion to Compel Joinder of a Necessary Party (Dkt. 5) -- *i.e.*, Defendant 3-F Contracting, Inc. -- on

1 the basis that “3F, and those working for 3F, conducted the earth-moving and land-clearing
2 activities alleged in Count One [of the Initial Complaint].”

3
4 39. On November 15, 2006, the Court denied the Johnson Defendants’ Motion to
5 Dismiss Claims for Injunctive Relief (Dkt. 11) stating, *inter alia*, “it is not in the public
6 interest to allow alleged violators of the CWA to avoid potential clean-up responsibilities
7 simply by selling the land upon which the alleged violations occurred.”

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9 40. On November 15, 2006, the Court granted the Johnson Defendants’ Motion to
10 Compel Joinder of a Necessary Party (Dkt. 11) stating, *inter alia*, “[a]ccording to Defendants,
11 3F contracted with Defendants to perform the land clearing that led to the present litigation.
12 If 3F is responsible for placing the dredge material in the waterways as Defendants assert,
13 3F’s absence from this lawsuit may force Defendants to bring a subsequent lawsuit against
14 3F resulting in unnecessary, repetitive litigation.”

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16 41. On December 6, 2006, the Court issued a Minute Order (Dkt. 12) “directing
17 Plaintiff to file the complaint against newly added third party defendant, 3F Contracting,
18 Inc.”

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20 42. Pursuant to the Court's order of December 6, 2006 the United States hereby
21 joins 3-F Contracting, Inc., as a defendant.
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COUNT 1
DISCHARGE OF DREDGED OR FILL MATERIAL
RESULTING FROM LAND CLEARING OPERATIONS
ON THE RANCHES

43. Plaintiff repeats and realleges the allegations set forth in each and every preceding paragraph.

44. Between 2003 and 2004, one or more of the Johnson Defendants and/or persons acting under their direction, supervision, and/or control, including Defendant 3-F Contracting, Inc., conducted large-scale mechanized land-clearing and earth-moving activities on approximately two thousand acres at the Ranches.

45. As part of the mechanized land-clearing and earth-moving activities, dredged or fill material was discharged into approximately 100 acres of waters of the United States, including the Santa Cruz River and its tributaries (including the Los Robles Wash) on various portions of the Ranches without the permit required by section 404 of the CWA, 33 U.S.C. § 1344.

46. The activities of Defendants constitute a violation of the CWA.

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COUNT 2
CONSTRUCTION OF EARTHEN LEVEES
ON THE KING RANCH

47. Plaintiff repeats and realleges the allegations set forth in each and every preceding paragraph.

48. Between 2003 and 2004, one or more of the Defendants and/or persons acting under their direction, control, and/or supervision, constructed one or more levees or dikes by

1 discharging dredged or fill material into waters of the United States, including the Santa Cruz
2 River and its tributaries, on various portions of the King Ranch, without the permit required
3 by section 404 of the CWA, 33 U.S.C. § 1344.
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5 49. The activities of the Defendants constitute a violation of the CWA.

6 **PRAYER FOR RELIEF**

7
8 WHEREFORE, the Plaintiff, the United States of America, respectfully requests that
9 this Court order the following relief:

10 A. That Defendants be permanently enjoined from discharging or causing the
11 discharge of dredged or fill material or other pollutants into any waters of the United States
12 except in compliance with the CWA;
13

14 B. That Defendants, or any combination thereof, be enjoined to undertake
15 measures, at Defendants' own expense and at the direction of the Environmental Protection
16 Agency, to effect complete restoration of the waters of the United States impacted by
17 Defendants' unlawful acts and/or to conduct off-site mitigation for unrestorable
18 environmental damage, as appropriate;
19

20 C. That Defendants be assessed pursuant to CWA section 309(d), 33 U.S.C. §
21 1319(d), a civil penalty for each day of each violation of CWA section 301(a), 33 U.S.C. §
22 1311(a);
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24 D. That the United States be awarded costs and disbursements in this action; and

25 E. That this Court grant Plaintiff, the United States of America, such other relief
26 as the Court may deem just and proper.
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1 Respectfully submitted this
2 28th day of December, 2006.

3 SUE ELLEN WOOLDRIDGE
4 Assistant Attorney General
5 Environment & Natural Resources Division

6 PAUL K. CHARLTON
7 United States Attorney
8 District of Arizona
9 SUE A. KLEIN
10 Assistant United States Attorney
11 Arizona State Bar No. 11253
12 Two Renaissance Square
13 40 North Central Avenue, Suite 1200
14 Phoenix, AZ 85004-4408
15 Telephone: (602) 514-7740
16 sue.klein@usdoj.gov

17 /s/ Todd W. Gleason
18 ROBERT H. FOSTER
19 TODD W. GLEASON
20 Trial Attorneys
21 Environmental Defense Section
22 United States Department of Justice
23 P.O. Box 23986
24 Washington D.C. 20026-3986
25 Telephone: (202) 305-0739
26 Fax: (202) 514-8865
27 robert.foster2@usdoj.gov
28 todd.gleason@usdoj.gov

21 Of Counsel:

22 Jessica Kao
23 Assistant Regional Counsel
24 Office of Regional Counsel
25 U.S. EPA – Region IX
26 75 Hawthorne Street
27 San Francisco, CA 94105
28 (415) 972-3922

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2 CERTIFICATE OF SERVICE

3 The undersigned hereby certifies that on this 28th day of December, 2006, a true and
4 correct copy of the foregoing FIRST AMENDED COMPLAINT was served on the following
5 through the Court's electronic filing system:
6

7 Christopher Geoffrey Stuart
8 Jones Skelton & Hochuli PLC
9 2901 N Central Ave
10 Ste 800
11 Phoenix, AZ 85012
12 602-263-1724
13 602-200-7831 (fax)
14 cstuart@jshfirm.com

15 DATE: December 28, 2006

16 Respectfully submitted,

17 /s/ Todd W. Gleason
18 TODD W. GLEASON
19 U.S. Dep't of Justice
20 Env. & Natural Resources Div.
21 Env. Defense Section
22 P.O. Box 23986
23 Washington D.C. 20026-3986
24 Telephone: (202) 305-0739
25 todd.gleason@usdoj.gov
26
27
28

